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Call West Communications, Inc.

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Monday, January 25, 1999

Federal Communication Commission
Office of the Secretary
1919 M Street NW, Room 222
Washington, DC 20554

RE: Docket No. 96-128
In response to DA 98-2644
FCC No. NSD-L-98-147
FCC No. NSD-L-98-148

Dear Commissioners,

In the Telecommunications Act of 1996, Congress required the FCC to level the playing field in the payphone industry by (a) establishing a plan to ensure fair compensation for "each and every completed intrastate and interstate call" using a payphone and (b) discontinuing intrastate and interstate carrier access payphone subsidies from basic exchange services.

Almost three years have gone by since Congress passed the Telecommunications Act of 1996, and Call West Communications is still facing essentially the same inequities it did before the passage of the new legislation. Very little has changed, and every day more evidence accumulates indicating that the FCC lacks both the political and the moral will to administer and enforce the 1996 law.

The manner in which the FCC has administered and enforced the dial around obligation has been an ugly demonstration of just how America no longer works for the little guy. The FCC has rubber stamped practically any proposal that large concerns like SBC or AT&T might propose with callous disregard to the deleterious effect those proposals might have on small concerns like Call West.

Of course we get the palliative of high sounding rhetoric and the endless drumbeat of delayed or unkept promises. But at the end of the day the bottom line is still the same: Call West continues to be paid for only about 15% of the total number of calls placed from its payphones.

I was taught to never play in a crooked poker game. But this game is clearly crooked. The FCC is the card mechanic, and it deals the big and politically powerful players any card they need to win.

I. Requests by SBC, Southern New England Telephone and GTE to Extend Waiver of Coding Digit Requirement:

This latest request by SBC, SNET and GTE to extend the deadline for the deployment for coding digits is yet one more example of the willingness of these companies to flex raw political muscle in order to prolong the uneven playing field in the payphone industry.

For example, I travel extensively in much of the Southwestern Bell operating area, including Texas, Kansas, Oklahoma and Arkansas. In my travels, I have yet to see *one single* "smart" payphone operated by Southwestern Bell. Southwestern Bell uses "dumb" payphones. The importance of this is that "dumb" payphones meet the FCC's requirement to be entitled to "per-call" compensation. Call West, on the other hand, uses "smart" payphones. "Smart" payphones, without the provision of the proper coding digits (which only the LEC can provide) do not meet the FCC's requirement to be entitled to "per-call" compensation*.

The end result is that Southwestern Bell *is* entitled to receive "per-call" compensation from its payphones whereas Call West *is not* entitled to receive "per-call" compensation from its payphones. Talk about a scam!

In the niche market that Call West operates, the implications are devastating. Call West operates payphones in truckstops and in convenience stores located along interstate highways. Since most of the people who use our payphones are transient, our average payphone generates about 900 "access-code" and "subscriber 1-800" calls per month, or between 6 and 7 times the average payphone in America.

The FCC granted AT&T a waiver to pay "per phone" compensation on those payphones not transmitting the proper coding digits. The "per phone" compensation amount is calculated by using the number of dial around calls the average payphone in America generates, or about 130 calls per phone per month. This is a far cry from the 900 calls per phone per month that Call West's payphones actually generate. The bottom line is that Call West loses 85% of its dial around compensation from AT&T until the proper coding digits are furnished by the LECs.

But LECs like Southwestern Bell (which operate predominatley "dumb" payphones) have no financial incentive to furnish the proper coding digits. In fact, their best interests lie in *not* furnishing the proper coding digits. Southwestern Bell is getting paid between 6 and 7 times more dial around than Call West is in the markets that Call West operates, giving Southwestern Bell a tremendous competitive advantage in those markets.

Why would Southwestern Bell not do everything within its power to delay the provisioning of the proper coding digits to its competitors, thus prolonging this uneven playing field as long as is possible?

Have LECs like Bell South–LECs that place "smart" payphones in most of their high traffic locations--had the same "problems" furnishing coding digits that Southwestern Bell has?

*Since Southwestern Bell uses "dumb" payphones, hooked up on lines that transmit the "27" code, which is a "payphone-specific" coding digit, Southwestern Bell's payphones meet the FCC's requirement to be entitled to "per-call" compensation.

Call West, however, uses 100% "smart" payphones, hooked up on "COCOT" lines which transmit an "07" code. The "07" code is not a payphone-specific coding digit, since it is also used to identify other types of lines (such as guest and patient rooms in hotels and hospitals) and therefore does not meet the FCC's requirement to be entitled to "per-call" compensation. The FCC, in previous orders, required Southwestern Bell to provide "70" coding digits, which are payphone-specific, via a technology called FLEX ANI, on lines hooked up to "smart" payphones no later than June 9, 1998.

II. Failure of LECs to comply with paragraph 36 of FCC Order DA98-481:

On March 9, 1998, the FCC issued an order that stated: "Beginning March 27, 1998, until a LEC has implemented FLEX ANI for all payphones it serves, it must provide monthly to IXCs and PSPs, upon request, information on: (1) end offices where FLEX ANI is available; and (2) proposed dates for the availability of FLEX ANI by end office for all areas where it is not yet available. The FCC goes on to state that: "Because many LECs have reported technical problems in transmitting payphone-specific coding digits even when FLEX ANI is available for a payphone, we require that in these two reports required herein, that LECs indicate which end offices and payphone ANI's are 'coding-digit-capable.' A payphone is 'coding-digit-capable' when it is able to transmit payphone-specific coding digits that are capable of reaching an IXC point of presence (POP) for subscriber 800 and access code calls from payphones using 10XXX and 1010XXXX."

Shortly after this date, I made verbal inquires to US WEST, Southwestern Bell, GTE and Fort Bend Telephone Company asking for these reports. The results are as follows:

(1) US WEST responded by giving me the address of a web page. Call West operates phones behind two US WEST end offices, and their web page indicated that the FLEX ANI would be implemented in these two end offices no later than June 30, 1998.

(2) Southwestern Bell responded that FLEX ANI would be implemented in 100% of its end offices no later than June 9, 1998.

(3) GTE responded that FLEX ANI would be implemented in 75% of its end offices no later than September 30, 1998 and 100% no later than December 31, 1998, but would not give any specifics as to which end offices would be implemented by September 30 and which ones would be implemented by December 31.

(4) Fort Bend Telephone Company responded that FLEX ANI would be implemented no later than September 30, 1998.

To this date, I still do not know (a) which end offices have implemented FLEX ANI, much less which ones are "coding-digit-capable" (b) for those end offices where FLEX ANI has been implemented, the date when it was implemented or (c) for those end offices where FLEX ANI has not been implemented, when the LECs plan to implement FLEX ANI.

Considering our dial around revenues from AT&T stand to increase 6 or 7 fold when FLEX ANI is implemented and/or the end offices become "coding-digit-capable," it is important for us to have this information. What is Call West supposed to do about the LECs' cavalier disregard for the FCC's March 9 Order?

III. Failure of AT&T to pay "per-call" compensation, even after the implementation of FLEX ANI:

On April 3, 1998, the FCC issued an order DA 98-642 which states that "IXCs must pay per-call compensation, not per-phone compensation, once FLEX ANI is available in an end office."

The FCC went on to clarify that, for those payphones in transition: "If a payphone that is not able to provide payphone-specific coding digits becomes capable of providing payphone-specific coding digits in the first 60 days of a quarter, then the IXC will be responsible for compensating that particular PSP on a per-call–instead of per-phone–basis beginning the next quarter."

Call West operates 32 payphones behind two different end offices operated by US WEST. US WEST indicated to Call West that it would have FLEX ANI implemented in these end offices no later than June 30, 1998.

Call West operates 88 payphones behind 12 different end offices operated by Southwestern Bell. Southwestern Bell indicated to Call West that it would have FLEX ANI implemented in these end offices no later than June 9, 1998.

On January 22, 1999, Call West received payment from AT&T, via its clearing house, APCC Services, for dial around for the 3rd Quarter of 1998.

AT&T did not pay dial around for "subscriber 1-800 calls" for one single of the above mentioned phones on a "per-call" basis, but instead paid on all 120 phones on a "per-phone" basis.

What this means is that, assuming Southwestern Bell met its deadline of implementing FLEX ANI, that it deployed FLEX ANI in all 12 end offices that Call West operates behind in the 10 day period starting after May 31 (the 61st day of the 2nd quarter) but before June 9 (Southwestern Bell's deadline to implement FLEX ANI).

Doesn't it raise all kinds of red flags that Southwestern Bell could all of a sudden do something in 10 days that it hasn't been able to do in the preceding 21 months (the time that had elapsed since the FCC first ordered the LECs to furnish coding digits)?

Consider that three of those 10 days fell on a weekend, which left only 7 working days to implement FLEX ANI, something the LEC Coalition asserted "required loading of the software in switches that do not have it, provisioning, translations, and trunk conditioning." The LEC Coalition also indicates that "LECs must test FLEX ANI with IXCs that wish to receive it and ensure proper functioning so that calls are not dropped." (FCC Order DA 98-481 dated March 9, 1998, p. 34)

Implementing FLEX ANI in all 12 end offices in 10 days also seems highly unlikely considering that Southwestern Bell reported that it would have FLEX ANI implemented in 75% of its end offices by March 9, 1998 (FCC Order DA 98-481 dated March 9, 1998, p. 33), meaning that not one of those 12 end offices was included in the 75%.

A similar situation exists with US WEST, though not as extreme. US WEST had 31 days before their June 30th commitment to implement FLEX ANI, and it claims to have implemented FLEX ANI in only 49.6% of its end offices by March 9, 1998. (FCC Order DA 98-481 dated March 9, 1998, p. 34)

IV. Underpayment, non-payment of dial around compensation by IXCs:

I cannot overstate how difficult it is to operate a small business--to pay salaries, line fees, insurance, rent, social security, parts, location commissions, etc.–when you don't get paid.

Due to the demographics of the payphone market in which Call West operates, our average payphone generates only about $40.00 per month in coin revenue. It takes almost all that just to pay access line fees. Our other source of revenue–operator service calls–has been devastated by dial around. So it is important that we get paid, and in a timely manner, for dial around calls.

Unfortunately, that has not been the case. First, there is the issue of non-payment. As Table 1 illustrates, there are a large number of phones that Call West operates where MCI, Sprint and World Com have paid no dial around compensation whatsoever.

Table 1. Number of non-paying ANIs

Calendar Quarter	Total No. of ANIs reported	MCI # non-paying ANIs	Sprint # non-paying ANIs	World Com # non-paying ANIs
1st Quarter '98	232	149	83	147
2nd Quarter '98	260	137	107	260
3rd Quarter '98	266	108	99	266

Then there are the hundreds of resellers out there that have made no payments to date.

The second problem is the problem of underpayment. As Table 2 illustrates, on the ANIs that MCI, Sprint and World Com have made payment on, the average number of calls per ANI fluctuates wildly from quarter to quarter. There is no explanation for this other than inaccurate call counts by the IXCs.

Table 2. Average number of calls paid per ANI

Calendar Quarter	MCI Avg. No. Calls/ANI	Sprint Avg. No. Calls/ANI	World Com Avg. No. Calls/ANI
1st Quarter '98	482	138	127
2nd Quarter '98	386	119	na
3rd Quarter '98	226	176	na

AT&T also has experienced problems with underpayment. AT&T, for the 2nd and 3rd quarters of 1998 paid "access code" calls on a per-call basis (AT&T paid "subscriber 1-800" calls on a "per-phone" basis for those quarters). As you know, AT&T has been required to pay compensation for access code calls for several years now, and for historical perspective I have included some historical data in Table 3. Table 3 includes data for 25 locations where Call West has furnished payphone service continuously since before the 4th quarter of 1995. The increase in the number of ANIs at these 25 locations is due to the fact that the overall number of calls made from these locations has increased over the years, making more phones necessary to handle the volume of traffic. As you can see, the number of access code calls that AT&T paid unexplainably declined by 96% from the 2nd quarter to the 3rd quarter of 1998, from 27,650 to 1,185. There is no explanation for this other than inaccurate call counts.

Table 3. Same location analysis: Number of access-code calls paid by AT&T

	No. of ANIs paid	No. of Access-code calls
4th Quarter '95	106	38,798
3rd Quarter '96	108	35,428
2nd Quarter '98	117	27,650
3rd Quarter '98	117	1,185

V. Is AT&T's coding digit jeremiad actually a ploy to gain market advantage?

In the markets in which Call West operates, one of its main competitors is a company called SmartStop, with offices in Portland, Oregon.

In its promotional materials, SmartStop asserts that it has a "strategic partnership" with AT&T. (See attached letter from AMBEST president Bob Lee to "ALL AMBEST Members." In additon to this letter, I also have in my posession a video tape--produced by SmartStop--in which SmartStop touts "our strategic partnership with AT&T." A copy of this video tape is available on request.)

In the past month, two of our clients have confronted me about not receiving their share of dial around compensation. I explain that to date we have been paid only a small fraction of the dial around compensation we should be getting, that the FCC is charged with enforcing the dial around obligation, and that we have no control over this situation.

Both clients then said that a SmartStop representative had approached them recently and had told them that, because of SmartStop's "partnership with AT&T," that they were getting paid dial around compensation, which they of course offered to share generously with the client.

All this may help to explain why AT&T made such a big flap over this chimera of coding digits, and why, after years of successfully tracking and paying compensation on "access code" calls, it all of a sudden finds itself having difficulties tracking and paying compensation on those calls.

The verbal testimony I cited is of course very vague, and at this point would fall more under the rubric of hearsay than evidence. But the attached letter from AMBEST gives it credence, which asserts that "SmartStop offers immediate access to Dial Around Compensation commissions." I would like to use the FCC forum to confront AT&T with this allegation. As the jocular Tom Sawyer said, I want AT&T to "Tell me it ain't so."

VI. Summary

Call West has experienced pervasive non-payments and under payments from its payphones. We believe these are due in large part to the FCC's failure to enforce its own rules.

The FCC waiver that allowed AT&T to pay on a "per-phone" rather than a "per-call" basis resulted in Call West losing approximately 85% of its dial around compensation from AT&T.

If AT&T is paying its "strategic partner" per call compensation, while at the same time paying Call West per phone compensation and grossly underpaying per call compensation, then this gives AT&T and its "strategic partner" a huge competitive advantage over Call West with location owners.

Overall, Call West to date has received only about 15% of the total dial around compensation it would have received if the FCC had followed Congress' mandate in the Telecommunications Act of 1996 and established and enforced a plan to ensure fair compensation for "each and every completed intrastate and interstate call."

Furthermore, the FCC has prolonged the uneven playing field in the payphone industry that the Telecommunications Act of 1996 was designed to eliminate. By granting AT&T's waiver to pay "per-phone" rather than "per-call" compensation, the FCC effected a system where Southwestern Bell and other LECs are paid on a "per-call" basis while Call West is paid on a "per-phone" basis, placing Call West at a competitive disadvantage in the markets in which it operates.

In the absence of FCC enforcement of its own rules, there is absolutely no incentive for LECs like Southwestern Bell or IXCs like AT&T to pay on a "per-call" basis. In fact, it is in their best interest to continue to pay on a "per-phone" basis for as long as possible.

VII. Recommendations

(1) The FCC should be more diligent in enforcing the rules it adopts. For small companies like Call West (we currently operate only 316 phones), the cost of filing suits against the LECs, IXCs and/or the FCC to enforce compliance would be unbearable.

(2) The requests by SBC, SNET and GTE to extend the waiver of coding digit requirements should be denied.

(3) In addition to the interest liabilities that IXCs currently accrue for late payment, IXCs should also be liable for late payment penalties. The penalty should accrue at 5% per quarter on any unpaid portion of the dial around obligation, making the total interest and penalties for unpaid dial around slightly over 30% per year. This is standard operating procedure with any other person or entity that fails to pay their taxes, credit cards, utilities or other payments on time. It is clear that the interest rate currently mandated by the FCC does not provide sufficient penalty to motivate IXCs to be diligent in tracking and paying dial around compensation.

The penalties should go to the FCC to help defray enforcement costs.

Sincerely yours,

Glenn Stehle

AMBEST
America's BEST Truck Stops

JAN 27 1999

MEMORANDUM

TO: **ALL AMBEST Members**

FROM: **Bob Lee** Bob

DATE: **October 16, 1997**

SUBJECT: **SmartStop Prepaid Calling Card**

We know those telephone calls from your truck stop are a significant revenue source, and even greater opportunities lie ahead! On October 9, the FCC finally set Dial Around compensation at $.284 per compensable call. AMBEST has identified a coordinated, long-term strategy to take advantage of this opportunity, while protecting the interests of our AMBEST membership.

After a great deal of research by our marketing committee and Board of Directors, I am writing to introduce SmartStop. They are a telecommunications company we have selected as our preferred partner for coin phone and network services management.

I endorse their carefully researched program because I believe the SmartStop strategy is good for AMBEST, good for our customers, and best satisfies your long-term interests. SmartStop offers immediate access to Dial Around Compensation commissions, their very comprehensive product strategy, and a real marketing power to ensure success and outstanding support to AMBEST. Consider the following:

1) SmartStop offers a 50-50 revenue split for all products, however, AMBEST members will enjoy an additional 20% bonus on Dial Around commission revenues. Another solid reason to work with and remain committed to AMBEST.

2) SmartStop has made a significant financial commitment to AMBEST, demonstrating their support for AMBEST activities.

3) SmartStop will manage AMBEST's prepaid calling card. A SmartStop partnership protects the competitiveness of this very important commissionable product.

4) SmartStop is committed to reducing long distance and Dial Around Compensation costs for AMBEST when calls are placed from your truck stop.

5) Drivers demand reliability and quality from long distance service at your truck stop. SmartStop's strategic partnership with AT&T was a factor in our decision to endorse SmartStop; clearing the best option for the majority of AT&T contracted truck stops.

Harpeth on the Green I
101 Westpark Drive, Suite 230
Brentwood, Tennessee 37027

800-910-7220
615-371-5187
Fax 615-371-5186

Developing these telecommunications network capabilities within AMBEST is not just visionary thinking; I believe this is a matter of immediate, competitive necessity! Through partnering with SmartStop, AMBEST will become the first truck stop chain with a telecommunications strategy that can make a difference for our fleet customers. After you evaluate the information enclosed, please sign and return the necessary documents to secure your installation date.

For more information, you may reach Mark Cleveland, Vice President of Network Development at SmartStop. His phone number is (800)717-5485 ext. 5840. This is a program we can all get behind and support!

Keep the Spirit!!!

Sincerely,

Bob Lee
President

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